'for the purposes of the chapter "seaman" shall include persons who otherwise might be deemed not to be seamen.' It puts into the class some that might otherwise be excluded; it does not take any one out who would otherwise be there."

Seamen under sections 544 and 601 are those who were seamen under the 1872 Act, the 1915 Act, and under maritime law.

The extension referred to in the above quotation does not apply here but the limitation of such extension applies.

II.

The Statute exempting a seaman's wages from execution (Sec. 601, Title 46, U.S.C.) does not apply to seamen in the coastwise trade (Sec. 544, Title 46, U.S.C.).

That Findlay, the judgment-debtor, was exclusively in the coastwise trade is not disputed (Petition, p. 2).

The Act of June 7, 1872, (17 Stat. 262, 276) exempted seamen's wages from execution.

The Act of June 9, 1874, (18 Stat. 64) excluded coastwise shipping from the operation of the 1872 Act.

This Court held that the 1874 Act simply clarified the original intent of the 1872 Act.

U. S. v. *Smith,* 95 U. S. 536;
Inter-Island v. *Byrne,* 239 U. S., 459, at 462.

The intent of the 1872 Act was to protect the improvident sailor at the end of a long voyage and Congress never

intended that act to apply to the coasting trade except between Atlantic and Pacific ports.

U. S. v. *The Grace Lothrop,* 95 U. S. 527, 532.

The 1872 Act was carried into the Revised Statutes of June 22, 1874 (sec. 4536). The Act of June 9, 1874, was omitted from that revision but was saved by section 5601 of such revision.

The 1915 Act repealed section 4536 of the Revised Statutes and re-enacted the Act of 1872, evidently to avoid any misinterpretation of the effect of the omission of the Act of June 9, 1874 from the revision.

The 1872 Act is now found in Title 46 U.S.C. in Section 601 and the 1874 Act in section 544 U.S.C. of the same title.

The effect of the 1915 repeal of section 4536 of the Revised Statutes and the re-enactment of the 1872 Act was to remove any doubt but that the coastwise trade was excluded from the operation of the exemption.

Inter-Island v. *Byrne,* 239 U. S. 459.

The enactment of the United States Code on June 30, 1926 and its confirmation by the Act of May 29, 1928, with the inclusion in Title 46 of both Provisions under Sections 544 and 601 respectively, demonstrate the continuance in force of the exemption and the limitation.

The cardinal principles of statutory construction here applicable are that, (a) re-arrangement does not change existing law, (b) omission of titles does not affect the purpose of the revision which is to re-state and not change the law, (c) enactment in substantially the same language of earlier legislation is deemed to be re-enactment and not new legislation, (d) repeal reinstates prior law which was re-

pealed by the Statute now repealed, (e) revision is not to imply change.

In maritime law there has always been and now is a distinction between the coasting trade and that which goes to sea.

The 1915 Act is not a new enactment nor is it to be considered as a single piece of legislation. It amended and revised laws relating to seamen. Such of its provisions as relate to the coasting trade specifically refer to the same. Section 12 of the 1915 Act is only a re-enactment of the old Act of 1872, section 61, except that a provision relating to fishermen was added.

The confusion in some of the courts has arisen from the assumption that the 1915 Act was a new law superseding all that had gone before. By calling it the "La Follette Act," this assumption has been furthered.

Wherever careful consideration was given and the matter fully presented to and considered by the courts, the conclusion was as respondent contends.

Duggar v. *Mobile & Gulf Co.*, 25 Ala. A. 2, s. c. 140 Southern 611, 224 Alabama 359, s. c. 140 Southern 614;
Jackson v. *Hauffman*, 159 N. Y. Misc. 182, s. c. 287 N. Y. Supp. 177.

Petitioner cites *Burns* v. *Davis*, 271 Fed. 442, which involved the wages of a fisherman in the trade with British North America; *Ornstein* v. *Pittsburg S. S. Co.*, 209 Ill. App. 202, involving the wages of a seaman on the Great Lakes; *Manufacturers Trust Co.* v. *Anderson*, 241 App. Div. 843, 271 N. Y. Supp. 333 as to which a writ of certiorari was allowed by this Court (293 U. S. 542 later

dismissed because of a change of parties, 293 U. S. 531); *Migliaccio* v. *Cappolla,* 160 N. Y. Misc. 557, 289 N. Y. Supp. 891, decided by the City Court of New York City, Kings County. None of these cases indicate any conflict in the Courts of last resort. The only decisions on the precise point by courts of last resort are by the Alabama Supreme Court in the *Duggar* case, *supra,* and the New Jersey Court of Errors and Appeals in the case now under consideration, both of which are in accord with the decision of this court in *Inter-Island* v. *Byrne, supra,* and all of which support respondent's contention.

Petitioner also cites

Smiley v. *Holm,* 285 U. S. 355;
Olson v. *Mellon,* 4 Fed. Supp. 947;
Uravic v. *F. Jarka Co.,* 282 U. S. 234 and
Wilder v. *Inter-Island Co.,* 211 U. S. 239.

Smiley v. *Holm* and *Olson* v. *Mellon* have no application here because Section 544 of Title 46 U.S.C. is the inclusion of a Statute that was never repealed. The Act of June 9, 1874 was never repealed by any subsequent enactment.

The application of the *Uravic* case is much in favor of respondent as is shown by the above quotation from the opinion in *Warner* v. *Goltra, supra.*

In *Wilder* v. *Inter-Island, supra,* this Court expressly reserved the point here involved and in *Inter-Island* v. *Byrne, supra,* this Court held that the point had been eliminated by the clarification resulting from the 1915 Act as above pointed out.

III.

A Writ of Certiorari, not being a matter of right, should not be granted to this petitioner, who is not the person affected by the levy.

Findlay, the judgment-debtor, does not complain. If there was a meritorious controversy to be decided, would not Findlay have moved to quash the levy or at least joined in such an application?

In view of the fact that this Court in *Inter-Island* v. *Byrne, supra,* has decided the point here involved and the New Jersey Court of Errors and Appeals, in the case now under consideration, strictly followed the *Byrne* decision, as even petitioner admits (Brief in Support of Petition, p. 5) and further that the judgment debtor, Findlay, has never objected to the validity of the levy, respondent submits that this cause should not be subjected to further review.

IV.

The application for a writ of certiorari should be denied.

(a) Findlay was a Master and not a seaman and was exclusively in the coastwise trade.

(b) The wages of a seaman in coastwise trade are not exempt.

(c) Petitioner does not show merit in his application.

Respectfully submitted,

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